



**Republic v Nandwa (Criminal Case E068 of 2019)  
[2025] KEHC 2349 (KLR) (Crim) (5 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2349 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL  
CRIMINAL CASE E068 OF 2019**

**LN MUTENDE, J**

**FEBRUARY 5, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**MELVIN MALUBI NANDWA ..... ACCUSED**

**RULING**

1. Melvin Malubi Nandwa, the Accused, was initially charged with the offence of Murder contrary to section 203 as read with Section 204 of the *Penal Code*, but, voluntarily decided to enter into a plea bargain with the State/prosecution as per the plea bargain agreement subsequently signed on 23<sup>rd</sup> October, 2024 that was adopted as an order of this court pursuant to Section 137 H of the *Criminal Procedure Code*. Consequently, he was convicted of a lesser charge of Manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*.
2. Facts of the case are that the accused was in an intimate relationship with Sharon Mbogi (Deceased) since 2016 until the fateful date. They cohabited within Kakamega County and were blessed with twins but one of them died in 2017.
3. In 2018, the accused relocated to Nairobi where he lived with his brother while seeking formal employment. In the month of April, 2019, he moved to his own place where he rented a house in Dandora Phase 2 room Number 22, on 2<sup>nd</sup> floor. He was subsequently joined by the deceased but the couple would engage in physical fights.
4. On 27<sup>th</sup> September, 2019, the couple got into their house while talking in hashed tones. The deceased received a call that led to an altercation between them which resulted into a physical fight. The deceased supposedly picked a kitchen knife intending to stab the accused but he disarmed her, then she grabbed his testicles, squeezed and bit them.



5. The accused picked a leso, (traditional rectangular cloth worn by East African women) tied the deceased hands together with the neck, tied both legs with a rope, laid her on the mattress and covered her with a duvet leaving her to untie herself. He travelled home and informed his parents of the fight he had with the deceased.
6. On 29/9/2019, the caretaker went to the house with a view of collecting rent and found the house locked with a padlock, windows closed and there was foul smell. He called Paul, the accused brother who was known to him. They reported the incident to the Dandora Police Station. Officers visited the scene and caused the body to be taken to the City Mortuary.
7. A post-mortem examination was conducted at the City Mortuary on 2<sup>nd</sup> October, 2019 which established that the cause of death was severe neck compression due to ligature strangulation and head injuries due to blunt force trauma.
8. To determine a just sentence, this court called for a pre-sentence report. The report dated 18<sup>th</sup> November, 2024, captured views of the secondary victims, the deceased mother and uncle. The deceased surviving child now aged 8 years is under the care of her maternal grandmother who is still hurting and notes that no penalty would bring back the deceased but prays for a custodial sentence that would make the accused reflect on the offence committed.
9. Views of the community obtained from the local administrator who was of the view that if the accused is released on a non-custodial sentence it was unlikely to cause instability. That he was ready to assist in his rehabilitation in the community.
10. It is recommended by probation and aftercare services that based on the age of the offender, the court considers a non-custodial sentence to enable the accused undergo guidance and counselling on behaviour change.
11. In pre-sentence mitigation, through learned counsel, Mrs. Nyamongo the accused expressed remorse. He urged that during their stay with the deceased they would fight a lot. That with intervention of parents they reconciled but separated. There was an element of infidelity. They later reconciled but the incident occurred. He sought forgiveness from the family of the deceased and urged the court to consider time that had passed. That he was a born again Christian, a church usher and Assistant Pastor, and a qualified counsellor with Faraja Foundation.
12. In response the Assistant Director of Public Prosecutions, Ms. Ogweno, urged the court to consider the fact of the issue of the relationship who solely depends on the maternal grandmother. She called upon the court to balance the prevailing situation and impose a custodial sentence.
13. The provisions of Section 205 of the *Penal Code* enact that:

“ Any person who commits the felony of manslaughter is liable to life imprisonment.”
14. The accused seeks to be given an alternative to incarceration in prison and in particular a non-custodial sentence. This kind of sentence is preferable when the accused is a first offender or if the offence the individual faces is a non-serious one so that they are restored to normality and eventually reintegrated into the community. To determine when to refer an offender to serve a non-custodial sentence, each case must be treated according to its circumstances. In a criminal case of this kind, the court must consider existence of aggravating circumstances, if any, and the mitigating factors. (Also see Sentencing Policy Guidelines) The sentence must be appropriate, just and effective.



15. The offence of manslaughter is serious such that a non-custodial sentence would not be appropriate, unless there exist a rare occurrence that led to commission of the offence.
16. The deceased was a spouse, a female, hence vulnerable. Gleaning from facts presented, there was violence involved that culminated into spousal homicide. In this respect, the principle of proportionality should be considered as well. The severity of sentence should be comparable with the seriousness of the offence.
17. In *Omuse v. R* [2009] KLR 214, the court held that sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and the proper exercise of discretion in sentencing requires the Court to consider that fact and circumstances of the case in their entirety before settling for any given sentence.
18. In *Ambani v Republic* [1990] eKLR, Bosire J. held that:

“...Sentences imposed on accused persons must be commensurate to the moral blameworthiness of the offender ...It is an improper exercise of discretion not to look on the facts and circumstances of the case in their entirety before settling for any given sentence,”
19. The accused herein saved judicial time by plea bargaining. But, the manner in which he strangled the deceased by applying pressure to her neck and restricting breathing/ blood to flow, was a heinous act of femicide. Secondly, leaving her body in the house to rot, and travelling to his home in Kakamega, some 379 kilometres away or thereabout, instead of even notifying his brother, Paul who resided in Nairobi was utterly odious and wicked. The accused who is stated to have been 32 years old at the time of the act has been in remand custody for six (6) years, a period that I do take into consideration.
20. For reasons given, I sentence the accused to Twenty (20) years imprisonment with effect from the date of arrest, 30/9/2019.
21. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**L.N. MUTENDE**

**JUDGE**

